

**PROJECT NO. 35246**

<b>RULEMAKING REPEALING AND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>REVISING P.U.C. SUBSTANTIVE</b>	<b>§</b>	
<b>RULES, CHAPTER 26, SUBCHAPTER E</b>	<b>§</b>	<b>OF TEXAS</b>
<b>(CERTIFICATION, LICENSING AND</b>	<b>§</b>	
<b>REGISTRATION - §§26.101, 26.102,</b>	<b>§</b>	
<b>26.103, 26.107, 26.109, 26.111, 26.113, AND</b>	<b>§</b>	
<b>26.114)</b>	<b>§</b>	

**ORDER ADOPTING REPEAL OF §§26.101, 26.102, 26.103, 26.107, 26.109,  
26.111, 26.113, AND 26.114 AND NEW §§26.101, 26.102, 26.107, AND 26.111  
AS APPROVED AT THE NOVEMBER 10, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts the repeal of §§26.101, 26.102, 26.103, 26.107, 26.109, 26.111, 26.113 and 26.114 with no changes to the proposed text as published in the June 11, 2010 issue of the Texas Register (35 TexReg 4816) and adopts new §§26.101, 26.102, 26.107 and 26.111 with changes to the proposed text as published in the June 11, 2010 issue of the *Texas Register* (35 TexReg 4816).

This rulemaking project is a complete revision of Chapter 26, Subchapter E relating to Certification, Licensing and Registration. The commission repeals and replaces Subchapter E as follows: repeal and adopt new §§26.101, 26.102, 26.107, and 26.111; repeal §26.103 and incorporate it into new §26.101; and repeal §§26.109, 26.113, and 26.114 and incorporate provisions of these three rules into new §26.111. This rulemaking takes eight substantive rules and streamlines these rules into four new substantive rules. The rules will remove obsolete language, update reporting requirements, strengthen certification requirements, and consolidate the rules to omit redundant requirements. These repeals and adoptions of new rules takes place in Project Number 35246.

The commission received comments from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), Level 3 Communications, LLC (Level 3), Verizon Wireless Texas, LLC (Verizon Wireless) and T-Mobile West Corporation (T-Mobile).

The commission posed three questions for comment, but did not receive any comments in response to the questions.

*Section 26.101(d) - Name on Certification.*

AT&T commented that the rule proposes that all local exchange telephone services (LETS), basic local telecommunications services (BLTS) and switched access service provided under a CCN be provided to consumers in the name under which the certificate is granted. AT&T stated that the one-size-fits-all approach is not realistic in today's environment and that an exception should be made for business customers with more than five access lines who contract for services. AT&T stated that business customers often want to receive services provided by regulated and non-regulated affiliated telecommunications companies under one name and a single bill. AT&T stated that the name that a company receives service from may be different than the certificated name. AT&T provided an example of business customers that may want to contract with AT&T Texas and other affiliated companies simply under the name AT&T.

AT&T also commented that under §26.101(d)(3) as proposed that the Staff would review any name for which an applicant for certification proposes to use and would notify the applicant if a requested name may not be used. However, AT&T argued that this proposal denies the applicant

an avenue for appeal. AT&T stated that if interim orders, including those dealing with standing and discovery rulings can be appealed to the commission, so should denial of a requested name.

*Commission response*

**It is not the commission's intention to require CCN holders to provide service in only one name. The language in §26.101(d) has been revised to clarify that service provided under a CCN shall be provided in the names or assumed names under which certification is granted by the commission.**

**The commission finds that the rule should clarify that the commission determines whether an applicant may use a requested name. As with other certification requirements, Staff submits recommendations regarding whether the requested name is in compliance with commission requirements. Consequently, an applicant could respond to Staff's recommendation before an order on the merits. Additionally, an applicant could appeal an adverse order. The language in subsection (d)(3) is revised to more closely reflect the actual certification review process: "Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated."**

*Section 26.101(e) - Affiliate Guidelines for CCN Holders.*

AT&T stated that §26.101(e) could be eliminated altogether. The wording repeats that language of PURA §54.102, applicants are responsible for knowledge of that provision, and in reality this requirement only currently applies to AT&T because of the five million regulated access line restriction. AT&T also stated that application of this provision to AT&T will likely end in the next year or two as more access lines are lost to non-regulated competitive alternatives and AT&T drops below the five million access line threshold.

*Commission response*

**The commission agrees with AT&T that the proposed language essentially repeats language in PURA §54.102 and is not necessary. The commission has removed §26.101(e) from the rule as adopted.**

*Section 26.101(f)(2) - Amending a CCN.*

AT&T commented that proposed §26.101(f)(2)(G) proposes that an application for an amendment for a minor service area boundary change must contain “published notice.” AT&T stated that it is not clear whether this refers to the notice that the commission directs be published in the Texas Register or something else. Moreover, the reference to P.U.C. Procedural Rule §22.52(b) only further confuses the issue because the rule includes the phrase, “except for minor boundary changes,” thereby directly excluding minor service area boundary changes from the rule’s notice requirements. AT&T requests that the first sentence of §26.101(f)(2)(G) be deleted.

*Commission response*

**Pursuant to P.U.C. Procedural Rule §22.52, published notice is not required for minor service area boundary changes. The commission agrees with AT&T's suggestion to delete the sentence that references published notice and has removed that sentence from the rule.**

*Section 26.101(h)(2) - Reporting Requirements.*

AT&T commented that subsection (h)(2) proposes that CCN holders must file in a commission project within two business days a copy of the termination/disconnection notice sent to certified telecommunications providers (CTPs). AT&T stated that two business days is insufficient time and requested that this be changed to five working days. AT&T requested changing the phrase "certified telecommunications providers" to "certificated telecommunications utilities" to better track the statutory language in PURA §51.002(10) and existing §26.5(36).

*Commission response*

**The commission agrees that it is appropriate to extend the requirement for filing a termination or disconnection notice to five business days and has revised what is now subsection (g)(2) to reflect that change.**

**The commission disagrees with AT&T's suggestion to replace "Certified Telecommunications Providers (CTPs)" with the term "Certified Telecommunications Utilities (CTUs)" because CTP is a broader term and AT&T's proposed change would reduce the number of companies that are reported to the commission that receive a termination or disconnection notice. Leaving the term as "certificated telecommunications**

providers” will help ensure that the commission is kept informed of all companies that receive a termination or disconnection notice.

*Section 26.101(h)(3) - Bankruptcy Notification.*

AT&T commented that §26.101(h)(3) requiring CCN holders to file a notice of bankruptcy in a project established for that purpose is simply not needed and should be deleted. AT&T stated that in Texas, only ILECs are CCN holders and AT&T is not aware of a single ILEC that has filed for bankruptcy since PURA was first enacted and the commission was created in 1975.

*Commission response*

The commission concludes that the bankruptcy notification requirement should remain in the rule. PURA §54.305 provides that the commission, upon written notice that a certified telecommunications utility has filed a petition in bankruptcy court, may inform the appropriate court and parties of the commission’s interest in obtaining notice of proceedings, and that the commission may intervene and participate in any bankruptcy proceedings that affect customers or providers of telecommunications service in Texas. The commission concludes that the notification requirement in §26.101(h)(3) will assist the commission in carrying out its responsibilities under PURA §54.305. Therefore, the commission finds that the bankruptcy notification requirement in this rule is appropriate.

*Section 26.101(h)(4) - Required Reports.*

AT&T proposed that §26.101(h)(4) is unnecessary and should be deleted. AT&T argued that PURA and other existing rules already require CCN holders to file all required reports. CCN holders are already charged with knowledge of the requirements of PURA and commission rules.

*Commission response*

**While the commission agrees that PURA and other Substantive Rules contain reporting requirements, the commission has attempted to list the major reporting requirements in one location for the convenience of CCN holders to facilitate compliance with commission rules. Therefore, the commission declines to make the change suggested by AT&T.**

*Section 26.101(i) - Revocation or Suspension.*

AT&T noted that the only express authority in PURA for revocation or amendment of a CCN is in §54.008 (“if the commission finds that the certificate holder has never provided service or is no longer providing service in all or any part of the certificated area”). AT&T stated that to the extent that subsection (i) repeats language already in PURA, such language is unnecessary and should be deleted. Further, AT&T stated that there is no basis in PURA for the remainder of the conditions set forth in subsection (i) with respect to CCN holders. AT&T commented that the Legislature has made clear several times that a CCN (for telecommunications) may only be revoked or suspended in accordance with PURA §54.008 and that although it may be in the public interest for the commission to have broader authority to suspend or revoke certificates such authority must come from the Legislature and cannot be implied.

*Commission response*

**The commission agrees that PURA §54.008 addresses the requirements for revocation of CCNs for telecommunications utilities; therefore, subsection (i) is not necessary and has been removed from the rule as adopted.**

*Section 26.107 - Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Non-dominant Telecommunications Carriers.*

Verizon Wireless Texas LLC (Verizon Wireless) and T-Mobile West Corporation (T-Mobile) filed comments seeking to clarify that proposed rule §26.107 would not be applicable to commercial mobile radio services (CMRS) providers. Verizon Wireless and T-Mobile noted that the commission's authority over CMRS providers is limited and that when this set of rules was last reviewed and modified in 2000 that the commission at that time reiterated in its preamble that the intention was that the rules would not apply to CMRS providers. Verizon Wireless and T-Mobile requested that the commission once again make clear that §26.107 is not intended to apply to CMRS providers, consistent with the historical commission practice. Verizon Wireless and T-Mobile stated that CMRS service is explicitly exempted from regulation in PURA §51.003, which defined the applicability of the act and reads, "Except as otherwise expressly provided by this title, this title does not apply to:...(5) a provider of commercial mobile radio service as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), other than conventional rural radio-telephone services provided by a wire-line telephone company under the Public Mobile Service rules of the Federal Communications Commission (47 C.F.R. Part 22)."

*Commission Response*

The commission agrees that PURA §51.002(10)(A)(iv) states that CMRS is a “telecommunications provider” but the law specifically exempts these entities from regulated entities for the purpose of Chapters 17 (Customer Protection), 55 (Regulation of Telecommunications Services) or 64 (Customer Protection). The commission agrees that CMRS providers are not subject to §26.107.

AT&T commented upon concerns with using the terminology of “telecommunications provider” versus “telecommunications utility” throughout substantive rule §26.107 because it believes that the use of the term telecommunications utility unlawfully enlarges the Commission’s authority. AT&T also noted that PURA §52.101 uses the term “telecommunications utility.”

*Commission response*

The commission agrees that PURA §52.101 uses the term “telecommunications utility” and that Substantive Rule §26.107 should be revised to reflect this terminology. The commission has changed references of “telecommunications provider” and “nondominant carrier” to “telecommunications utility” or “registrant” throughout §26.107.

*Section 26.107(b)(1) - Registered Name.*

AT&T stated its concern that subsection §26.207(b)(1) contains the requirement that a nondominant carrier may register in only one name. AT&T argued that there is no support for this limitation in PURA §§52.101 - 52.112. AT&T stated that the rule as proposed appeared to

be contrary to PURA §52.102's directive that the commission's jurisdiction over nondominant carriers is limited by Chapter 52, Subchapter C, except as provided by Chapter 52, Subchapters D and K, Chapter 55 and PURA §55.011. AT&T stated that the requirement that the registration name shall not be deceptive, misleading, etc. has no basis in PURA Subchapter C and would more appropriately within the scope of the duties of the Texas Secretary of State.

*Commission response*

**The commission disagrees with AT&T on this point. The commission concludes that the requirement in §26.207(b)(1) that registrants may register in only one name is appropriate, and that the requirement that the name shall not be deceptive, misleading, etc. is within the jurisdiction of the commission. PURA §52.102(a) provides that Subchapter K of Chapter 55 applies to non-dominant telecommunication utilities. PURA §55.307, which is a part of Subchapter K of Chapter 55, authorizes the commission to prohibit deceptive or fraudulent practices. Additionally, the commission notes that the "one name" requirement for carriers subject to §26.107 has existed for more than ten years.**

*Section 26.107(b)(1)(C) - Registered Name*

AT&T commented that subsection §26.107(b)(1)(C), which proposes that the Staff will review any name which an applicant for certification proposes to use and notify the applicant if a requested name may not be used effectively denies the applicant an avenue for appeal of Staff's decision. AT&T stated that if interim orders, including those dealing with standing and discovery rulings can be appealed to the commission, so should denial of a requested name.

*Commission response*

The commission's rules provide a method of recourse for denial of a requested name. Section 22.2(14) of the commission's procedural rules states that a complainant is a "person...who files a complaint intended to initiate a proceeding with the commission regarding any act or omission by the commission or any person subject to the commission's jurisdiction." Accordingly, a person may file a complaint regarding a denial of a requested name as an act by the commission. The last sentence of subsection (b)(1)(C) has been revised to remove the reference to an application to clarify that this section pertains to registrations - which are informational filings - which do not have an amendment application process.

*Section 26.107(b)(5) - Telecommunications Affiliates.*

AT&T was concerned that the requirement in subsection (b)(5), that a registrant must provide a list of all telecommunications affiliates that operate in Texas with a description of the relationship to the registrant and an organizational chart if available, does not appear to have a statutory basis in Chapter 52, Subchapter C. AT&T questioned whether this proposed requirement really serves a useful purpose and stated its belief that subsection (b)(5) should be deleted.

*Commission response*

The commission disagrees with AT&T's suggestion to delete this requirement. PURA §26.103(b)(3) requires nondominant registrants to provide "other registration information the commission directs." The commission believes that affiliate information is useful to

**Staff in determining company affiliates and whether such affiliates are in compliance with commission rules. Therefore, affiliate information should be required of registrants subject to §26.107.**

*Section 26.107(e)(2) - Reporting Requirements.*

AT&T commented on §26.107(e)(2), which reminds registrants to comply with all reporting requirements in PURA and applicable substantive rules, including several that are listed. AT&T stated that since registrants are already charged with knowledge of PURA's requirements and all applicable rules, subsection could be deleted in its entirety; however, since some registrants do not deal with regulatory requirements daily as do ILECs, keeping this subsection may be helpful to some. AT&T further commented that the reference to HUB Report and Gross Receipts Assessment Report should be deleted because per PURA §12.252 it only applies to entities that are "utilities," and as that term is defined in PURA §11.004 and §51.002(8) a "utility" is a dominant carrier. AT&T stated that this would exclude all telecommunications utilities except for ILECs. By contrast, in PURA §52.256, which requires the Workforce Diversity Report, the Legislature used the term "telecommunications utility", a term which has its own more expansive definition in PURA §51.002(11), and which includes interexchange carriers (IXCs) and other specifically delineated non-dominant carriers. AT&T stated that similarly the reference to Gross Receipts Assessment Report should be deleted because per PURA §16.001 it only applies to public utilities (*i.e.*, ILECs) and IXCs and does not apply to all nondominant carriers, telecommunications utilities, or telecommunications providers.

*Commission response*

**The commission has attempted to list the major reporting requirements in one location for the convenience of registrants to facilitate compliance through awareness. The commission agrees that PURA §12.252 (HUB Report), §52.256 (Workforce Diversity Report), and §16.001 (Gross Receipts Assessment Report) apply only to telecommunications utilities. Therefore, the references to HUB, Workforce Diversity, Gross Receipt Assessment Report requirements have been removed from subsection (e)(2) as adopted.**

*Section 26.107(f) - Revocation or Suspension.*

AT&T commented that among the reasons listed as a basis for revocation or suspension of registration is that the registrant has been found to be in violation of the rules of the Federal Communications Commission and that there does not appear to be a statutory basis for this requirement and hence, it should be deleted.

*Commission response*

**The commission agrees that it is appropriate to remove the reference to the Federal Communications Commission, and has removed such language.**

*Section 26.111 - Certificate of Operation Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.*

*General Comments*

The commission posed three questions for comment, but did not receive any comments in response to the questions. However, portions of the rule have been revised and clarified to be consistent with similar provisions in the recently amended §25.107 in Project No. 37685, *Rulemaking to Amend Subst. R. §25.107 Regarding Certification of Retail Electric Providers (REPs)*.

AT&T stated that it has similar concerns with this proposed rule that it has with §26.101 in that it repeats provisions already in PURA and is longer than is necessary. AT&T commented that, on the other hand, it recognizes that it is in this area (not with ILEC-CCN holders) where there have been problems. AT&T stated that a few CLECs have “simply walked away” without complying with PURA §54.253 (relating to disconnection of service - a CLEC only provision), and some have engaged in business practices that have resulted in customer dissatisfaction, customer complaints and fraudulent activities. AT&T stated that it is possible that some of the problems that have arisen to date could be eliminated or lessened considerably by requiring more information of applicants on the front end of the certification process, which may allow the commission to more readily recognize non-qualified or high-risk applicants and deny certification. AT&T stated that even though there are several CLECs within the AT&T family of companies that would be affected by the proposed rule, AT&T is willing to live with unnecessary aspects of this proposed rule “as is” to see if it produces fewer customer complaints and better results overall. However, AT&T suggested that the commission should revisit this rule again in 2011 or 2012 in the event that it proves unnecessarily burdensome for the majority of CLECs who do comply with PURA and the commission’s rules.

*Commission response*

The commission appreciates AT&T's recognition that the commission is attempting to alleviate past concerns with this rule revision. The commission agrees with AT&T that some of the proposed disclosure requirements may unnecessarily burden the CLECs that comply with PURA and commission rules. In Project No. 37685, *Rulemaking to Amend Subst. R. §25.107 Regarding Certification of Retail Electric Providers (REPS)*, the commission declined to adopt similar additional disclosure requirements for REPs because they would be unduly burdensome to REPs. Similarly, the commission concludes that the disclosure requirements proposed in §26.111 would be too burdensome for the vast majority of CLECs that do comply with PURA and commission rules. Therefore, the commission has revised the managerial and technical requirements to mirror, to the extent appropriate for COAs and SPCOAs, §25.107 as amended in Project No. 37685.

*Section 26.111(i)(3) - Amendment of a COA or SPCOA Certificate.*

Level 3 commended the commission for moving beyond the initial Level 3 streamlining proposal and proposing a post merger notice process that applies when two certificated entities are parties to a merger or acquisition. Level 3 stated that the competitive marketplace has resulted in the bankruptcy of non-dominant carriers while at the same time it has created opportunities for non-dominant carriers to consolidate assets or expand lines of business. However, Level 3 contended that legacy regulatory pre-approval requirements constrain nondominant carriers from acting quickly to changing market demands. Level 3 stated that prior approval requirements expose businesses to substantial and unnecessary risks during the time that it may take to process an

application process, but that the post merger approval language in subsection (i)(3) ensures that the commission and the state of Texas remain in the forefront of promoting a competitive marketplace. Level 3 commented that the commission does not waive jurisdiction over certificated entities with adoption of the post merger approval process proposed in subsection (i)(3), and that the commission maintains jurisdiction over post-merger certificated entities as long as they provide services in Texas under commission-issued certificates of authority. Level 3 commented that an even more compelling argument for the post merger process envisioned by subsection (i)(3) is the fact that certain merger and acquisition transactions involving public utilities that have market power are not subject to a commission pre-approval process (ILECs subject to Chapter 58 of PURA, *see* PURA §14.101). Level 3 commented that unlike ILECs, nondominant carriers do not possess market power or control over local exchange bottleneck facilities and should be subject to less stringent procedures than ILECs. Level 3 also commented that the post merger language in subsection (i)(3) is not controversial, no opposition was raised in comments or at the rulemaking workshop, and should be approved. Finally, Level 3 requested that “may” be changed to “shall” in the sentence that reads, “[I]f the commission Staff has not filed, within 10 business days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued.”

*Commission response*

**The commission appreciates Level 3’s commendation for its efforts in streamlining the process concerning the acquisition or merger of two certificated CLECs. The commission does not agree with Level 3’s suggestion to change in subsection (i)(3) the word “may” to “shall.” Subsection (d)(5) states “[e]xcept where good cause exists to extend the time for**

review, the commission will enter an order approving, rejecting, or approving with modifications a new or amendment application for a COA or SPCOA not later than the 60th day after the date the application for the certificate is filed.” The substantive rule requires the commission to approve, reject, or approve with modifications a new or amendment application for a COA or COA not later than the 60th day after the application is filed. Because the rule requires action on a COA or SPCOA application or amendment application, the commission believes that changing subsection (i)(3) to state “shall” rather than “may” is unnecessary. However, to be consistent with subsection (d)(5) the commission has changed the word “may” to “will” which addresses Level 3’s concern and is consistent with the requirement of subsection (d)(5).

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

These repeals and new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2009 and Supplement 2010) (PURA), which requires the commission to adopt rules reasonably required in the exercise of its powers and jurisdiction; specifically PURA §52.001 which grants the commission the authority to implement rules to protect the public interest and provide equal opportunity to each telecommunications utility in a competitive marketplace.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.101, 17.051, 17.052, 17.053, 51.002, 51.010, 52.102, 52.103, 52.152, 52.207, 52.256, 54.001, 54.002, 54.003, 54.008, 54.051, 54.052, 54.053, 54.054, 54.101, 54.102, 54.103, 54.105, 54.151, 54.152, 54.153, 54.154, 54.155, 54.156, 54.201, 54.251, 54.253, 54.255, 54.258, 55.171 - 55.180, 55.302, and 55.307.

§26.101 - Repeal

§26.102 - Repeal

§26.103 - Repeal

§26.107 - Repeal

§26.109 - Repeal

§26.111 - Repeal

§26.113 - Repeal

§26.114 - Repeal

**§26.101. Certificate of Convenience and Necessity Criteria.**

- (a) **Scope and Purpose.** The commission may grant a certificate of convenience and necessity (CCN) to provide local exchange telephone service, basic local telecommunications service or switched access service pursuant to Public Utility Regulatory Act (PURA), Chapter 54, Subchapter B.
- (b) **Certificates of Convenience and Necessity for new service areas and facilities.**
- (1) The commission may issue a CCN only if it finds that the CCN is necessary for the service, accommodation, convenience, or safety of the public and complies with the requirements in PURA §54.054 (relating to Grant or Denial of Certificate).
- (2) The commission may grant a CCN as requested, refuse to grant it, or grant it for the construction of a portion of the requested system, facility, or extension, or for the partial exercise of the requested right or privilege.

- (c) **Non-exclusivity of CCN.** A CCN granted under this section shall not be construed to vest exclusive service or property rights in the area certificated. The commission may grant additional certification to another utility or utilities for all or any part of the area certificated under this section, upon a finding of public convenience and necessity.
- (d) **Name on Certification.** All local exchange telephone service, basic local telecommunications service, and switched access service provided under a CCN shall be provided in the names or assumed names under which certification is granted by the commission.
- (1) The applicant must provide the following information from its registration with the Texas Secretary of State or from its corporate registration in another state or county, as applicable:
- (A) Form of business being registered (*e.g.*, corporation, limited liability company, partnership, sole proprietorship, etc.);
  - (B) Any assumed names;
  - (C) Certification/file number; and
  - (D) Date business was registered.
- (2) The requested certificate names shall not be deceptive, misleading, vague, inappropriate, confusing or duplicative of an existing Certificated Telecommunications Utility (CTU).
- (3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph

(2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.

(e) **Amending a CCN.** The commission may amend any certificate issued under this section if it finds that the public convenience and necessity requires such amendment.

(1) Pursuant to PURA Chapter 54 Subchapter B, CCNs holders must amend their certificates for:

(A) A change in the name of the holder of the CCN, including a change of the corporate name or assumed name of the certificate holder.

(B) A change in the boundary of a service area.

(C) CCNs for Non-Chapter 58 utilities are not transferable without approval of the commission and continue in force except as ordered by the commission. The CCN amendment must be filed jointly by the utilities involved and comply with the requirements set forth in PURA §14.101 and §51.010 (relating to Report of Certain Transactions; Commission Consideration and Commission Investigation of Sale, Merger, or Certain Other Actions).

(2) Minor service area boundary amendment applications are applications that involve less than 5% of the customers of an exchange. An application for an amendment for a minor service area boundary change must be jointly filed by the affected CCN holders and, at a minimum, contain the following information:

- (A) Legal name and all assumed names under which the applicant conducts its business;
- (B) Business office address, primary telephone number, fax number, website address and primary email address;
- (C) Business regulatory contact(s), including business address, primary phone number and primary email address;
- (D) Reason(s) for the proposed amendment;
- (E) Clear and concise written description of the geographic location of the proposed amendment;
- (F) Maps (minimum size of 8 1/2" x 11") of the proposed amendment identifying the existing and proposed boundaries clearly and conspicuously. At a minimum, the applicant must provide a county map and expanded view(s) that clearly and conspicuously identifies the boundary change. Each map must clearly and conspicuously illustrate the location of the area for which the amendment is being requested, including but not limited to, geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. The maps of the proposed amendment must be submitted in hard copy and, upon request by Staff, in compatible electronic format; and
- (G) Notice of the proceeding and notice to customers. Customers being transferred from one utility to another shall be given notice in accordance

with §26.130(k) of this title (relating to Selection of Telecommunications Utilities).

- (f) **Sale, transfer, merger.** A notice must be filed for the sale, transfer, or merger (STM) of at least 50% of the utility, or sale, acquisition or lease of facilities as an operating unit or system for a total consideration of more than \$100,000.
- (1) Chapter 58 electing utilities must file a written notification with the commission no later than 30 days after the STM has closed.
  - (2) Chapter 59 electing utilities must comply with the requirements set forth in PURA §14.101 and §51.010.
- (g) **Reporting requirements.**
- (1) **Contact Information.** Each CCN holder must maintain accurate contact information with the commission. At a minimum, the CCN holder is required to report a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical address, primary business telephone number, toll-free customer service number, and primary email address. Additional information for tertiary emergency contact, separate mailing address, and additional company contact information is optional.
    - (A) After January 1st and before April 30th of each year, a CCN holder must electronically submit its current contact information to the commission, in the manner established by the commission.

- (B) Contact information must be updated not later than the 30th day after the date of any change to the required information in paragraph (1) of this subsection, in the manner established by the commission.
- (2) **Termination/Disconnection Notice.** CCN holders must file a copy of the termination/disconnection notice sent to certified telecommunications providers (CTP) within five business days following the issuance of the notice. The service termination/disconnection notice must be filed in the project established for this purpose.
- (3) **Bankruptcy Notification.** CCN holders that have filed a petition of bankruptcy must file a notice of bankruptcy in a project established for this purpose. The notice must be filed not later than the fifth business day after the filing of a bankruptcy petition. The notice of bankruptcy must include, at a minimum, the following information:
- (A) The name of the certificated company filing for bankruptcy, date and state in which the bankruptcy proceeding was filed, type of bankruptcy (*e.g.*, Chapter 7, 11, 13), the bankruptcy case number; and
- (B) The number of affected customers, the type of service being provided to the affected customers, and name of the provider(s) of last resort associated with the affected customers.
- (4) **Required Reports.** A certificate holder shall file all reports required by PURA and other sections in this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.73 of this title (relating to Annual Earnings Report); §26.76 of this title (relating to

Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.81 of this title (relating to Service Quality Reports), §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

**§26.102. Registration of Pay Telephone Service Providers (PTS).**

- (a) **Scope and Purpose.** This section applies to the registration of pay telephone service (PTS) providers pursuant to Public Utility Regulatory Act (PURA) Chapter 55, Subchapter H, §§55.171 - 55.180 (relating to Pay Telephones) and Chapter 26, Subchapter N, §§26.341 - 26.347 of this title (relating to Pay Telephone Services).
- (b) **Registration Requirement.** All PTS providers (except CCN holders) must submit a PTS registration before providing pay telephone services in the State of Texas. If the PTS registration holder has any change to the information provided in the registration, then the PTS registration holder must update its registration information within 30 days of the change.
- (c) **Re-registration.** PTS registrations expire on August 1st of each year. Each PTS provider must renew its registration with the commission by electronically submitting the required form in the manner established by the commission. A registration that is renewed during the period from January 1 to July 31 is extended one year. A registration that is not renewed is no longer valid.
- (d) **Disclosure of location.** Registration requires disclosure of the location of each of the registrant's pay telephones by county. If a registrant asserts confidentiality of information related to the physical location of pay telephones, it must file this information in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Material).

- (e) **Network access.** Certificated Telecommunications Utilities (CTUs) shall provide pay telephone access service (PTAS) to a PTS provider that provides its commission-issued PTS registration number to the CTU.
  
- (f) **Revocation or suspension.** If the commission finds that a PTS provider is in violation of PURA, commission rules, or rules of the Federal Communications Commission, the commission may suspend or revoke the PTS registration and may direct all CTUs to discontinue provision of pay telephone access service to the PTS provider.
  
- (g) **Reporting requirements.** Each PTS provider must maintain accurate contact information.

**§26.107. Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers.**

- (a) **Scope and Purpose.** This section applies to the registration of telecommunications utilities (*i.e.*, providers of intralata and interlata long distance telecommunications services, prepaid calling services companies pursuant to §26.34 of this title (relating to Telephone Prepaid Calling Services), and other telecommunications services that do not require certification pursuant to the Public Utility Regulatory Act (PURA) Chapter 54, Subchapter C (relating to Certificate of Operating Authority); except as noted in PURA §51.002(10) (relating to Definitions)).
- (b) **Registration Requirement.** Each telecommunications utility not holding a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA) shall file with the commission the information set forth in paragraphs (1) - (5) of this subsection no later than the 30th day after commencing service in the State of Texas. A registered telecommunications utility must report to the commission any changes to the information provided in its registration within 30 days of the change.
- (1) **Registered Name.** A telecommunications utility may register in only one name:
- (A) The applicant shall provide the date the requested name was accepted, the certification/file number assigned to the applicant and any assumed names registered with the Texas Secretary of State or the registration of assumed names in another state or county, as applicable.
- (B) The requested name shall not be deceptive, misleading, vague, or duplicative of an existing certificated telecommunications utility (CTU) or other existing registrants.

- (C) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to provide at least one suitable name in order to be registered.
- (2) **Registration Number.** The commission will assign a PUC registration number to each new registrant upon completion of the registration process;
- (3) **Contact Information.** Contact information must include, but not be limited to: business office information (contact's name, contact's title, business and mailing address, primary phone number, fax number and primary email address), complaint contact, regulatory contact, primary and secondary emergency contacts and a toll-free customer service number;
- (4) **Federal Carrier Identification.** Registrant must provide the FCC Carrier Identification Code (CIC) or National Exchange Carriers Association (NECA) Operating Carrier Numbers (OCNs), if available; and
- (5) **Telecommunications Affiliates.** Registrant must provide a list of all telecommunications affiliates that operate in Texas with a description of the relationship to the registrant, and an organizational chart, if available.
- (c) **Re-Registration.** Registrations subject to this section expire on May 1st of each odd-numbered year. Each registrant subject to this section must re-register with the commission between January 1st and April 30th of each odd-numbered year by electronically submitting the required form in the manner established by the commission.

A registration that is renewed during the period from January 1 to April 30 of an odd-numbered year is extended for another two years. A registration that is not renewed is no longer valid.

(d) **Amendments to Registration.**

(1) **Name change.** If a registrant proposes to change its name, it must file a written notification and provide at a minimum: its current registered name and registration number, the new registered name, and an explanation for the requested name change.

(2) **Cancellation of a Registration.** If a registrant proposes to cancel its registration it must file a written notification and provide at a minimum: its current registered name, registration number, and explanation of the requested cancellation. The explanation of the cancellation must include the disposition of all affected customers, whether notice was provided to customers, a copy of the notice provided to customers, whether any credits or deposits are outstanding, and the disposition of credits or deposits.

(e) **Required Reports.**

(1) Updates to contact information. All registrants subject to this section shall annually submit updated contact information in the manner established by the commission.

(2) All registrants subject to this section shall comply with the reporting requirements in PURA and other sections of this title, including but not limited to: §26.89 of

this title (relating to Information Regarding Rates and Services of Nondominant Carriers).

- (f) **Revocation or Suspension.** The commission may suspend or revoke the registration pursuant to PURA Chapter 17, if the commission finds that a registrant is in violation of PURA or commission rules.

**§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.**

- (a) **Scope and Purpose.** This section applies to the certification of persons and entities to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.
- (b) **Definitions.**
- (1) **Affiliate** -- An affiliate of, or a person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control with, the person specified.
  - (2) **Control** -- The term control (including the terms controlling, controlled by and under common control with) means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.
  - (3) **Executive officer** -- When used with reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.
  - (4) **Facilities-based certification** -- Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

- (5) Permanent employee -- An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.
- (6) Person -- Includes an individual and any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.
- (7) Principal -- A person or member of a group of persons that controls the person in question.
- (8) Shareholder -- The term shareholder means the legal or beneficial owner of any of the equity in any business entity, including without limitation and as the context and applicable business entity requires, stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) **Ineligibility for certification.**

- (1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.
- (2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity as required by PURA §54.102 (relating to Application for Certificate).
- (3) An applicant is ineligible for a SPCOA if the applicant, together with its affiliates, has more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.
- (4) The commission will not grant an SPCOA to a holder of a:

- (A) CCN for the same territory; or
- (B) COA for the same territory.

(d) **Application for COA or SPCOA certification.**

- (1) A person applying for COA or SPCOA certification must demonstrate its capability of complying with this section. A person who operates as a COA or SPCOA or who receives a certificate under this section shall maintain compliance with this section.
- (2) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.
- (3) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice to the applicant's right to reapply.
- (4) While an application for a certificate or certification amendment is pending, an applicant shall inform the commission of any material change in the information provided in the application within five working days of any such change.
- (5) Except where good cause exists to extend the time for review, the commission will enter an order approving, rejecting, or approving with modifications, a new or amendment application within 60 days of the filing of the application.

- (6) While an application for COA or SPCOA certification or certification amendment is pending, an applicant shall respond to a request for information from commission staff within ten days after receipt of the request by the applicant.
- (e) **Standards for granting certification to COA and SPCOA applicants.** The commission may grant a COA or SPCOA to an applicant that demonstrates that it is eligible under subsection (c) of this section, has the technical and financial qualifications specified in this section, has the ability to meet the commission's quality of service requirements, and it and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission shall consider whether the applicant satisfactorily provided all of the information required in the application for a COA or SPCOA.
- (f) **Financial requirements.** To obtain COA or SPCOA certification, an applicant must demonstrate the shareholders' equity required by this subsection.
- (1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than \$100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than \$25,000.
- (2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder shall not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the

amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes, but is not limited to, dividend distributions, redemptions and repurchases of equity securities, or loans or loan repayments to shareholders or affiliates.

- (3) Shareholders' equity shall be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet shall include the independent auditor's report. The unaudited balance sheet shall include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all material respects, of the information provided in the unaudited balance sheet.

(g) **Technical and managerial requirements.** To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

- (1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.
- (2) To support technical qualification, applicants must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant

and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.

(3) An applicant shall include the following in its initial application for COA or SPCOA certification:

(A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) The complaint history, disciplinary record, and compliance record shall include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Office of the Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information shall include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

- (ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record.
    - (iii) The commission may also consider any complaint information on file at the commission.
  - (B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;
  - (C) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and
  - (D) Disclosure of whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny, deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.
- (4) **Quality of service and customer protection.**
  - (A) The applicant must affirm that it will meet the commission's quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only

providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.

- (B) The applicant must affirm that it is aware of and will comply with the customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B, of this title (relating to Customer Service and Protection).

- (5) **Limited scope of COAs and SPCOAs.** If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:

- (A) Limit the geographic scope of the COA.
- (B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.

- (h) **Certificate Name.** All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission shall grant the COA or SPCOA certificate in only one name.

- (1) The applicant must provide the following information from its registration with the Office of the Secretary of State or registration with another state or county, as applicable:

- (A) Form of business being registered (*e.g.*, corporation, company, partnership, sole proprietorship, etc.);
- (B) Any assumed names;
- (C) Certification/file number; and

- (D) Date business was registered.
  - (2) Business names shall not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a Certificated Telecommunications Provider (CTP).
  - (3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.
- (i) **Amendment of a COA or SPCOA Certificate.**
- (1) A person or entity granted a COA or SPCOA by the commission shall file an application to amend the COA or an SPCOA in a commission approved format in order to:
    - (A) Change the corporate name or assumed name of the certificate holder.
      - (i) Name change amendments may be granted on an administrative basis, if the holder is in compliance with applicable commission rules, and no hearing is requested.
      - (ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant that the requested name may not be used

by the applicant. The applicant will be required to provide at least one suitable name or the amendment may be denied.

- (B) Change the geographic scope of the COA and SPCOA.
  - (C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:
    - (i) be filed at least 60 days prior to the occurrence of the transaction;
    - (ii) be jointly filed by the transferor and transferee;
    - (iii) comply with the requirements for certification; and
    - (iv) comply with applicable commission rules.
  - (D) Change Type of Provider from resale-only, facilities-based only or data-only restrictions on a SPCOA certificate.
  - (E) Discontinuation of service and relinquishment of certificate, or discontinuation of optional services. Such an application is subject to subsections (m) and (n) of this section.
- (2) If the application to amend is for corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder as previously approved. If the commission staff cannot make a determination of continued compliance based on the applicable substantive rules

from the information provided on the abbreviated amendment application, then a full amendment application shall be filed.

- (3) When a certificate holder acquires or merges with another certificate holder (other than a CCN holder), the acquiring entity must file a notice within 30 days of the closing of the acquisition or merger in a project established by staff. Staff shall have 10 business days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within 10 business days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission shall include but not be limited to:
  - (A) A joint filing statement;
  - (B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and
  - (C) An affidavit from each certificated entity attesting to compliance of COA or SPCOA certification requirements.
- (4) No later than five working days after filing an amendment application or amendment notice with the commission, the applicant must provide a copy of the amendment application or notice to all affected 9-1-1 entities and the Commission on State Emergency Communications.
- (5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.

- (j) **Non-use of certificates.** Applicants shall use their COA or SPCOA certificates expeditiously.
- (1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.
  - (2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.
- (k) **Reporting Requirements.**
- (1) Each COA or SPCOA holder must provide and maintain accurate contact information. At a minimum, the COA or SPCOA holder shall maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or SPCOA holder shall the required information in the manner established by the commission.
  - (2) Contact information must be updated between January 1st and April 30th of each year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.

- (3) When terminating or disconnecting service to another CTP, COA and SPCOA holders shall file a copy of the termination/disconnection notice with the commission not later than two business days after the notice is sent to the CTP. The service termination/disconnection notice shall be filed under a project number established for that purpose.
- (4) COA and SPCOA holders shall file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than the fifth business day after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:
  - (A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy (*e.g.*, Chapter 7, 11, or 13, and whether it is voluntary or not), the bankruptcy case number; and
  - (B) The number of affected customers, the type of service being provided to the affected customers, and the name of the provider(s) of last resort associated with the affected customers.
- (5) A certificate holder shall file all reports required by PURA and this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers); §26.465 of

this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

- (l) **Standards for discontinuation of service and relinquishment of certification.** A COA or SPCOA holder may cease operations in the state only if commission authorization to cease operations has been obtained. A COA or SPCOA holder that ceases operations and relinquishes its certification shall comply with PURA §54.253 (relating to Discontinuation of Service by Certain Certificate Holders).
  - (1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications, each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Universal Service Fund, and the Office of Public Utility Counsel (OPC).
    - (A) The notification letter shall clearly state the intent of the certificate holder to cease providing service.
    - (B) The notification letter shall give customers a minimum of 61 days notice of termination of service, and the date of termination of service shall be clearly stated in the notification letter.
    - (C) The notification letter shall inform customers of the carrier of last resort or make other arrangements to provide service as approved by the customers.

- (2) A COA or SPCOA holder that intends to cease operations shall file with the commission an application to cease operations and relinquish its certificate, which shall provide the following information:
  - (A) Name, address, and phone number of certificate holder;
  - (B) COA or SPCOA certificate number being relinquished;
  - (C) The commission docket number in which the COA or SPCOA was granted;
  - (D) A description of the areas in which service will be discontinued and whether basic service is available from other certificate holders in these areas;
  - (E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and
  - (F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.
- (3) All customer deposits and credits shall be returned within 60 days of notification to cease operations and relinquish certification.
- (4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations shall be paid by the certificate holder relinquishing the certificate.
- (5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or law.

(m) **Standards for discontinuing optional services.** A COA or SPCOA holder discontinuing optional services shall comply with PURA §54.253.

(1) The COA or SPCOA holder shall file an application with the commission to discontinue optional services, which shall provide the following information:

- (A) Name, address, and phone number of certificate holder;
- (B) COA or SPCOA certificate number being amended;
- (C) The commission docket number in which the COA or SPCOA was granted;
- (D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;
- (E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and
- (F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.

(2) Notification to each customer receiving optional services is required, consisting of the following information:

- (A) The notification letter shall clearly state the intent of the certificate holder to cease an optional service and a copy of the letter shall be provided to the commission and OPC.

- (B) The notification letter shall give customers a minimum of 61 days notice of discontinuation of optional services.
- (3) All customer deposits and credits affiliated with the discontinued optional services shall be returned within 30 days of discontinuation.
- (4) The certificate holder shall maintain the optional services until it has obtained commission authorization to cease the optional services.
- (5) Commission approval of the discontinuation of an optional service does not relieve the certificate holder of obligations to its customers under contract or law.
- (n) **Revocation or suspension.** A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the holder of the certificate does not meet the requirements under this section to operate as a COA or SPCOA. A suspension of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities associated with obtaining new customers in the state of Texas. A revocation of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for violations of law within its jurisdiction. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or SPCOA's certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:
- (1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;
- (2) Providing false or misleading information to the commission;

- (3) Bankruptcy, insolvency, failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;
- (4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;
- (5) Failure to meet commission reporting requirements;
- (6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service;
- (7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;
- (8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;
- (9) Failure to maintain financial resources in accordance with subsection (f)(1) of this section;
- (10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;
- (11) Suspension or revocation of a registration, certification, or license by any state or federal authority;
- (12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the certificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service;
- (13) Failure to serve as a provider of last resort if required to do so by the commission;

- (14) Failure to provide required services to customers under the federal or Texas Universal Service Fund;
- (15) Failure to comply with the rules of the federal or Texas Universal Service Fund;  
and
- (16) Violations of PURA or any commission rule or order applicable to the certificate holder.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that the repeal of §§26.101, 26.102, 26.103, 26.107, 26.109, 26.111, 26.113, and 26.114 and new §§26.101, 26.102, 26.107, and 26.111 are adopted with changes to the text as proposed.

**SIGNED AT AUSTIN, TEXAS this the 23rd day of NOVEMBER 2010.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BARRY T. SMITHERMAN, CHAIRMAN**

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**DONNA L. NELSON, COMMISSIONER**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**